

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

LEON ROTHENBERG
TEXTILE CORPORATION

Claim No. CU-5120

Decision No. CU 5646

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$7,137.19, was presented by LEON ROTHENBERG TEXTILE CORPORATION on December 15, 1967 based upon the asserted loss of payment for merchandise shipped to Cuban consignees.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967, (FCSC Reg., 45 C.F.R. See 531.1(d) (1969)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g).)

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims. The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.) This is such a claim.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of New York and that at all times pertinent to this claim all of the outstanding capital stock of claimant was owned by Leon Rothenberg, a national of the United States since birth. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of invoices, contemporary correspondence, letters from Cuban banks, and extracts from claimant's books and records relating to this claim. The evidence discloses that in two instances the Cuban consignees paid for their purchases from claimant by making deposits in local banks and that dollar reimbursement to claimant was denied by Cuban officials. Claimant states that it has received neither the funds representing payments made to local banks by the consignees nor any payments for the outstanding debts due from the other Cuban consignees.

The following information concerning the shipments made to the Cuban consignees, supported by the evidence of record, shows the paid and the unpaid accounts; the dates on which payments were made or acknowledged by the local banks, and the net amounts thereof after adjustments for commissions due on account of such payments; and with respect to the unpaid account, the invoice date and the net amount due:

<u>PAID ACCOUNTS</u>		
<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Net Amount</u>
Antonio Pascual Alvarez "La Imperial"	April 16, 1960	\$ 550.17
Simon Rabinovich	November 26, 1959	<u>2,534.24</u>
Total paid		<u>\$3,084.41</u>

<u>UNPAID ACCOUNT</u>		
<u>Consignee</u>	<u>Invoice Date</u>	<u>Net Amount</u>
La Cueva, S. A.	June 5, 1959	<u>\$ 501.12</u>

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government

CU-5120

effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the days after payments were made to or acknowledged by the banks, and on September 29, 1959, the effective date of Law 568, with respect to the unpaid account which was payable prior to that date.

A portion of the claim, as originally filed, is based upon the loss of payment for merchandise assertedly shipped to two other Cuban consignees, namely, Laszlo Fischer in the amount of \$610.74, and Garcia Varas in the aggregate amount of \$1,120.21, representing two shipments for \$680.31 and \$439.90, respectively. In response to Commission suggestions for copies of invoices covering these shipments or other appropriate supporting evidence, claimant's President stated in a letter of July 20, 1970 that he had not as yet found the copies of the invoices. No other evidence has been submitted to support this portion of the original claim.

CU-5120

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1969).)

The Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based on debts due from Laszlo Fischer and Garcia Varas. Accordingly, this portion of the claim is denied.

Another portion of the claim was presented by claimant in its letter of July 20, 1970 in response to Commission inquiries. The Commission had noted that claimant's letter of February 1, 1961, included in a pertinent file of the Department of State, set forth debts due from consignees not claimed herein originally; that it did not refer to two consignees which were the subject of the original claim; and that with respect to one consignee the amount due did not agree with that originally claimed. Claimant was asked for a full explanation of these discrepancies in the form of an affidavit. Claimant's response of July 20, 1970 was in the form of a letter which failed to explain the matter and merely enclosed copies of certain letters of claimant concerning the consignees referred to by claimant in its February 1, 1961 letter. No other supporting evidence was filed.

The Commission finds the record insufficient to justify the conclusion that claimant sustained losses with respect to shipments to consignees it had mentioned in its letter of February 1, 1961 that are not already covered by the amounts being allowed herein. Accordingly, the portion of the claim based upon these asserted shipments is denied.

The Commission had decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in this case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 501.12
November 27, 1959	2,534.24
April 17, 1960	<u>550.17</u>
Total	<u><u>\$3,585.53</u></u>


CU-5120

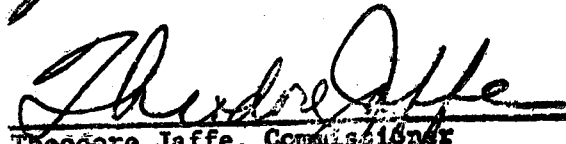
CERTIFICATION OF LOSS

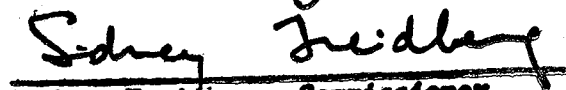
The Commission certifies that LEON ROTHENBERG TEXTILE CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Five Hundred Eighty-five Dollars and Fifty-three Cents (\$3,585.53) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

AUG 6 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 12.1(b)(6) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-5120